

This listing of claims will replace all prior versions, and listings, of claims in the application:

Listing of Claims:

1-9 (cancelled)

10. (Currently amended) A system for adjustable placement of foodstuff, comprising:
a pair of adjacent transport surfaces that meet at an interface wherein one of the pair of transport surfaces is adapted to present rows of foodstuff items, wherein the rows may contain various numbers of foodstuff items, wherein each of the pair of surfaces is configured to transfer an undefined number of foodstuff items in each row across the interface so that the foodstuff items are transferred from one of the transport surfaces in a first arrangement to another of the transport surfaces in a second laterally shifted and axially more compact arrangement, and the system being capable of delivering the rows of foodstuff items to a downstream food processing apparatus in a nested arrangement.

11. - 13. (Cancelled)

14. (Currently amended) A system for the adjustable placement of foodstuff, the system comprising:
an upstream apparatus for presenting plural sets of foodstuff items with each set arranged in rows, wherein each row may contain various numbers of foodstuff items,
a transport surface located adjacent the upstream apparatus that receives the foodstuff items from the upstream apparatus across an interface between the upstream apparatus and the transport surface, wherein the upstream apparatus

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and the transport surface are configured to transfer an undefined number of foodstuff items in each row across the interface;
a lateral shift mechanism mechanically linked to the transport surface for selectively laterally adjusting the transport surface within a predetermined range so that one set of foodstuff items presented by the upstream apparatus is offset from an adjacent set of foodstuff items; and
a downstream apparatus for processing foodstuff, the downstream apparatus having a transport surface for receiving the plural sets of foodstuff from the lateral adjusting conveyor.

15. (Previously Presented) The system of claim 14 further including a means associated with the laterally adjustable conveyor for sensing the location of the foodstuff items on the transport surface.

16. (Original) The system of claim 14 wherein the upstream apparatus comprises an axial spacing apparatus.

17. (Original) The system of claim 14 wherein the downstream apparatus comprises an oven with a transport surface running therethrough.

18. (Original) The system of claim 14 wherein the downstream apparatus comprises an axial spacing apparatus.

19-30 (Canceled)

Remarks/Arguments

Claims 1-10, 14-20, and 26-30 are pending in the application. Claims 1-10, 14-20, and 26-30 are rejected.

Applicant proposes to amend claims 10 and 14 and cancel claims 1-9, 19, 20, and 26-30.

Claims 10, 14-16, and 18 have been rejected under 35 U.S.C. 102(a) in view of Sanchez de Leon Rodriguez Roda and 35 U.S.C. 102(b) in view of Newton and Remensperger.

The present invention is directed to a system that provides a more optimal arrangement of foodstuff on a conveyor to provide a higher throughput for a processing device, such as an oven. For example, the system of the present invention may receive a set of foodstuff, such as hamburger patties, in which the patties are arranged in rows of four, as shown in Fig. 3. However, the system of the present invention is not limited to handling a specific number of items per row. The system of the present invention is adapted to handle items arranged in rows that may contain a variety of number of items per row. For example, the system may process a batch of foodstuff items arranged in rows in which the number of items per row is not defined by the system. In other words, the system does not limit the number of items per row that can be transferred from one surface to the next.

Applicant proposes to amend claim 10 to recite a system for adjustable placement of foodstuff that comprises a pair of adjacent transport surfaces that meet at an interface wherein one of the pair of transport surfaces is adapted to present rows of foodstuff items, wherein the rows may contain various numbers of foodstuff items, wherein each of the pair of surfaces is configured to transfer an undefined number of foodstuff items in each row across the interface so that the foodstuff items are transferred from one of the transport surfaces in a first arrangement to another of the transport surfaces in a second laterally offset and axially more compact arrangement, and the system being capable of delivering the rows of foodstuff items to

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a downstream food processing apparatus in a nested arrangement. Applicant further proposes to amend claim 14 to recite a system for the adjustable placement of foodstuff that comprises an upstream apparatus for presenting plural sets of foodstuff items with each set arranged in rows, wherein each row may contain various numbers of foodstuff items, a transport surface located adjacent the upstream apparatus that receives the foodstuff items from the upstream apparatus across an interface between the upstream apparatus and the transport surface, wherein the upstream apparatus and the transport surface are configured to transfer an undefined number of foodstuff items in each row across the interface; a lateral shift mechanism mechanically linked to the transport surface for selectively laterally adjusting the transport surface within a predetermined range so that one set of foodstuff items presented by the upstream apparatus is offset from an adjacent set of foodstuff items; and a downstream apparatus for processing foodstuff, the downstream apparatus having a transport surface for receiving the plural sets of foodstuff from the lateral adjusting conveyor.

None of the prior art references disclose a system that is configured to transfer an undefined number of items per row from one surface to another. Sanchez de Leon Rodriguez Roda discloses an automatic alternating fruit feeder that includes a first transfer surface or transporter (8) that delivers fruit to a second transfer surface that includes two sets of adjacent conveyor belts (1, 1'). The conveyor belts (1, 1') deliver the fruit to another surface. As can be seen most clearly in Figs. 1 and 2, there are four conveyor belts (1, 1'). Although it is not clearly shown or described how the fruit items are arranged on transporter (8) this system may transfer only the number of items limited by the number of conveyor belts (1, 1'). Therefore, the system of Sanchez de Leon Rodriguez Roda defines that only four fruit items at most may be transferred from transporter (8) to conveyor belts (1, 1'). Newton discloses a shaking and conveying apparatus in which containers (10) are transferred from a conveyor (11) to an inclined chute (12). Conveyor (11) includes lugs (13) that engage behind containers (10) to

force them onto chute (12). Chute (12) includes notches (14) through which lugs (13) pass as conveyor (11) is driven. As seen most clearly in Fig. 1, the system of Newton defines and limits the number of items that can be transferred from conveyor (11) to chute (12). Newton can transfer up to only four items from conveyor (11) to chute (12). Remensperger discloses a centering arrangement for dough portions (10). Dough portions (10) are arranged in a single off-set arrangement on feed belt (14) and are transferred to an intermediate conveyor (16) that transfers dough portions (10) onto conveyor belt (18). The system of Remensperger limits the number of items that can be transferred by guide beams formed between transmitters (58, 60) and receivers (62, 64). In fact, Remensperger describes in column 4, lines 3-10 that it is essential that, at any instance, only one dough portion (10) is positioned on intermediate conveyor (16), so as to permit correction of unequal displacements independent of each other. A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). As pointed out above each of Sanchezde Leon Rodriguez Roda, Newton, and Remensperger disclose devices that specifically define the number of items per row that can be transferred from one surface to another. None of these references disclose a system that is configured to transfer an undefined number of items per row from one surface to another. Therefore, none of these references anticipate claims 10 and 14 as presented with this response and Applicant respectfully submits that claims 10 and 14 as presented herewith clearly define over Sanchezde Leon Rodriguez Roda, Newton, and Remensperger.

Claim 17 has been rejected under 35 U.S.C. 103(a) as being unpatentable over Sanchez de Leon Rodriguez Roda in view of Goranson. Claim 17 depends from claim 14 and recites that the downstream apparatus comprises an oven with a transport surface running therethrough. To establish a *prima facie* case of obviousness, three basic criteria must be met.

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First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, not in applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991). Applicant's arguments regarding claim 14 are equally applicable here. As pointed out above Sanchez de Leon Rodriguez Roda does not disclose a system as recited in claim 14 as presented with this response. Goranson does not make up for the deficiencies of Sanchez de Leon Rodriguez Roda. Since Sanchez de Leon Rodriguez Roda does not disclose a system as recited in claim 14 there is no suggestion or motivation to make the proposed combination. Furthermore, the proposed combination would not present a reasonable expectation of success because the resulting system would still limit the number of items that could be transferred from one surface to another. Additionally, the resulting combination would not teach or suggest all the claim limitations because the limitation of a transport surface located adjacent the upstream apparatus that receives the foodstuff items from the upstream apparatus across an interface between the upstream apparatus and the transport surface, wherein the upstream apparatus and the transport surface are configured to transfer an undefined number of foodstuff items in each row across the interface would not be met. Therefore, Applicant respectfully requests that the Examiner withdraw this rejection.

In response to the rejection under 35 U.S.C. 112 and the objection to the drawings, Applicant proposes to cancel claims 19 and 20.